



## DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary  
Office of the General Counsel

Public Health Division  
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July 29, 1996

**TO :** Paula Williams, Acting Director  
Office of Tribal Self Governance

**FROM :** Barbara Hudson, Attorney  
Office of the General Counsel

**SUBJECT :** Substitution of Pages in Signed Annual Funding Agreements (AFAs).

The purpose of this memorandum is to bring to your attention a potential problem which could have legal ramifications. The problem occurs if a Tribe submits a signed copy of its annual funding agreement (AFA) to the IHS for signature and, prior to signing the AFA, the IHS and the Tribe agree on some final changes. The Tribe submits new AFA pages which reflect these agreed upon changes and requests that these new pages be substituted in its submitted AFA. If pages are substituted without the written agreement of the person who signed the AFA, there may be an argument that the Tribe never agreed to the language in question. When a Tribe has submitted a signed AFA and now agrees to some final changes, someone from the agency should discuss this potential problem with the Tribe, i.e., only the person who signed the AFA may submit and agree to the changes. The Tribe and the agency may address the potential problem in a variety of ways which are described below.

**1. Written Request from the Tribe**

The Tribe could have the individual who signed the AFA, usually the chief executive officer, send a letter which requests the substitution of pages with the agreed upon revisions.

**2. New AFA**

The Tribe could submit a new signed AFA which includes the changes.

3. **New Signature Page**

The IHS could substitute the changed pages sent by a tribal staff member and draft a new signature page without the Tribe's signature. In this case, the IHS could sign the AFA and send it to the Tribe for signature.

4. **Initial Changes**

If the change is minor, the IHS could make a "pen and ink" change in the AFA and initial the change. The AFA would then be returned to the Tribe for the chief executive officer to initial the change and return to IHS. The AFA would become official only when both parties have initialed the changes.

If you have any questions about this memorandum, please give me a call at 301-443-0406.

A handwritten signature in cursive script, appearing to read "Barbara Hudson".

Barbara Hudson

cc: **Assistant Regional Attorneys**

**Agency Lead Negotiators**